

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

GREGORY CHARLES MITCHELL,
Debtor.

*
*
* Case No. 09-14885-RGM
* Chapter 7
*

MOTION FOR SANCTIONS BASED UPON VIOLATION OF AUTOMATIC STAY

GREGORY CHARLES MITCHELL, by counsel, pursuant to 11 U.S.C. §362(k), files this motion against Arron Kyle Raistrick and Cindy Raistrick and Colleen J. MacAlister for sanctions based upon their violation of the automatic stay in this case and, in support thereof, states as follows:

1. Gregory Charles Mitchell (the "Debtor") filed a voluntary chapter 7 petition with this Court on June 18, 2009. Gordon P. Peyton, Trustee is the duly appointed chapter 7 trustee in the case.

2. Arron Kyle Raistrick and Cindy Raistrick (the "Claimants") were listed twice on the Debtor's schedule F as having unsecured claims in the amounts of \$4,240.00 and \$26,689.00. These claims were based upon their counterclaims in a lawsuit (the "Lawsuit") the Debtor had filed against them in the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida (the "Circuit Court"). Colleen J. MacAlister was counsel for the Claimants in the Lawsuit. Notices of the bankruptcy filing were sent to the Raistricks in care of their attorney.

JAMES W. REYNOLDS, ESQUIRE, VSB NO. 33226
Counsel for Gregory Charles Mitchell
ODIN FELDMAN & PITTELMAN PC
9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
Direct: 703-218-2134
Fax: 703-218-2160
E-Mail: jim.reynolds@ofplaw.com

3. Additionally on June 19, 2009, the Debtor sent an email to the Raistricks' counsel notifying her of the bankruptcy filing. A copy of the email is attached hereto as Exhibit A. The email attached as Exhibit A contained the entire bankruptcy petition as well as the docket sheet relating to this bankruptcy case.

4. It is clear that the Raistricks and Ms. MacAlister had actual notice of this chapter 7 case. Moreover on or about July 22, 2009, the Debtor filed a Plaintiff's Notice of Filing for Bankruptcy (the "Notice") with the Circuit Court. A copy of the Notice, which was also mailed to Ms. MacAlister, is attached hereto as Exhibit B. The docket sheet for the civil case before the Circuit Court shows that the Notice was filed on July 23, 2009. The entries on the Circuit Court's dockets for July 23 and 27, 2009, identify the Debtor's bankruptcy case by the case number and the date it was filed. A copy of the Circuit Court's docket sheet is attached hereto as Exhibit C.

5. Despite having actual notice of the Debtor's bankruptcy filing, the Raistricks, through their counsel, continued with collection actions against the Debtor. Specifically the Raistricks and Ms. MacAlister continued litigating their motion (the "Motion") for an award of their attorney's fees in the case. A hearing on their Motion was held on July 27, 2009. See Circuit Court docket attached as Exhibit C. This resulted in the Circuit Court entering an order (the "Order") awarding the Raistricks attorney's fees in the amount of \$22,183.50 and costs in the amount of \$4,505.58. The total amount awarded was \$26,689.08. A copy of the Order is attached hereto as Exhibit D.

6. It is clear that the Raistricks and Ms. MacAlister were prohibited from continuing to litigate the Motion for an award of their attorney's fees. The filing of a

bankruptcy case initiates an automatic stay applicable to all entities that bars the continuation of an action against the Debtor to recover a claim that arose before the commencement of the case. See 11 U.S.C. §362(a)(1). In this matter the Raistricks and their counsel had actual notice of the bankruptcy case prior to the hearing on the Motion. Instead of respecting the automatic stay, they decided to proceed with the litigation and obtain a judgment against the Debtor.

7. There can be no doubt that the Raistricks and their counsel had knowledge of the Debtor's bankruptcy case, as they were sent several written notifications and the bankruptcy filing is listed twice on the Circuit Court docket sheet. The Raistricks and Ms. MacAlister originally violated the automatic stay on June 19, 2009, when they filed a Notice of Hearing for Attorney Fees and Costs. See Circuit Court docket sheet attached as Exhibit C. Perhaps they could argue that the filing of the notice was a technical violation because the bankruptcy case was only filed the day before. However, the violation of the automatic stay was clearly willful when they decided to proceed with the Motion and obtain a judgment against the Debtor. A willful violation of the automatic stay occurs when a creditor knows that the stay has been invoked and deliberately intends the action that violates the stay. In re Hedetneimi, 297 B.R. 837 (Bkrtcy.M.D.Fla. 2003).

8. An individual injured by any willful violation of the automatic stay "shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages. See 11 U.S.C. §362(k)(1). Moreover, the Raistricks are liable for the willful violation of the automatic stay even if they were relying upon the advice of their counsel. In re Banderas, 236 B.R. 841 (Bkrtcy.M.D.Fla.

1999). The Court can also award punitive damages under these circumstances.

Solfanelli v. CoreEstates Bank, M.A., 203 F.3d 197 (3rd Cir. 2000).

9. When the Debtor filed for bankruptcy protection, he believed that he would be relieved from the pressure and harassment applied by creditors to collect on their claims. However, the Raistricks and Ms. MacAlister have failed to abide by the automatic stay and have attempted to further collect a debt, which has left the Debtor suffering from emotional distress.¹ In re Dawson, 390 F.3d 1139 (9th Cir. 2004).

WHEREFORE, Gregory Charles Mitchell, by counsel, requests that the Court enter an order:

- (a) determining that the Raistricks and Ms. MacAlister are in contempt of a court order for willfully violating the automatic stay,
- (b) awarding sanctions, including attorney's fees and costs, against the Raistricks and Ms. MacAlister based upon their willful violation of the automatic stay,
- (c) awarding punitive damages against the Raistricks and Ms. MacAlister based upon their willful violation of the automatic stay,
- (d) awarding damages based upon emotional distress, and
- (e) for such other relief as this Court deems appropriate.

Respectfully submitted,
Gregory Charles Mitchell
By counsel

¹Medical testimony is not necessary to award damages for emotional distress. In re Dawson, 390 F.3d 1139 (9th Cir. 2004).

jw.r
is/James W. Reynolds

James W. Reynolds, Esquire, VSB No. 33226
Counsel for Gregory Charles Mitchell
ODIN FELDMAN & PITTELMAN PC
9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
Direct: 703-218-2134
Fax: 703-218-2160
E-Mail: Jim.Reynolds@ofplaw.com

#1151927v1 jwrpl-mitchell motion sanctions auto stay 32246/00001

From: Greg Mitchell <gregorymitchell@mindspring.com>
Subject: Gregory Mitchell Bankruptcy filing
Date: June 19, 2009 5:58:47 PM EDT
To: Hallie Evans <hallie.evans@akerman.com>
Cc: Colleen MacAllister <colleen@cjmaclaw.com>
 ↵ 2 Attachments, 508 KB

Begin forwarded message:

From: "Rhonda Morgan" <rmorgan@mris.com>
Date: June 19, 2009 2:30:29 PM EDT
To: gregorymitchell@mindspring.com
Subject: BK

Rhonda Morgan

Rhonda Morgan
 Assistant to John C. Morgan, Esquire

John Carter Morgan, Jr., PLLC
 98 Alexandria Pike, Suite 10
 Warrenton, VA 20186
 (540) 349-3232 office
 (540) 349-1278 fax



[Mitchell.Gre....pdf \(284 KB\)](#)

Eastern District of Virginia - LIVE

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**U.S. Bankruptcy Court
 Eastern District of Virginia (Alexandria)
 Bankruptcy Petition #: 09-14885-RGM**

Date filed: 06/18/2009

Assigned to: Robert G. Mayer
 Chapter 7
 Voluntary
 No asset

Debtor
 Gregory Charles Mitchell
 1667 K Street NW #677
 Washington, DC 20006
 SSN / ITIN: xxx-xx-2430

represented by **John C. Morgan, Jr.**
 John Carter Morgan, Jr.,
 PLLC
 98 Alexandria Pike, Suite 10
 Warrenton, VA 20186
 (540)349-3232
 Fax : (540)349-1278
 Email:
 johnmorgan@mris.com

Trustee
 Gordon P. Peyton
 Redmon, Peyton & Braswell
 510 King Street, Suite 301
 Alexandria, VA 22314
 (703) 684-2000

| Filing Date | # | Docket Text |
|-------------|---|-------------|
| | | |

| | | |
|------------|---|--|
| 06/18/2009 | 1 | Voluntary Petition under Chapter 7 filed by John C. Morgan Jr. of John Carter Morgan, Jr., PLLC on behalf of Gregory Charles Mitchell (Morgan, John) |
| 06/19/2009 | 2 | Meeting of Creditors: 07/27/2009, 02:00 PM, Office of the U.S. Trustee, 115 South Union Street, Suite 206, Alexandria, Virginia. Objections to Discharge/Dischargeability due by 09/25/2009. Interim Trustee: Gordon P. Peyton. |

Eastern District of Virginia - LIVE

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|----------------------|--------|
| PACER Service Center | |
| Transaction Receipt | |
| 06/19/2009 12:36:08 | |
| PACER | Client |

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION

GREGORY C. MITCHELL,

Plaintiff,

Case No.: 08-9210-CA

vs.

ARRON KYLE RAISTRICK and
CINDY RAISTRICK,

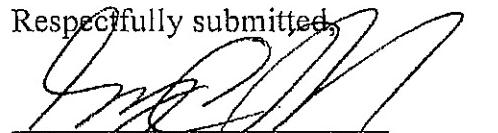
Defendants.

/

PLAINTIFF'S NOTICE OF FILING FOR BANKRUPTCY

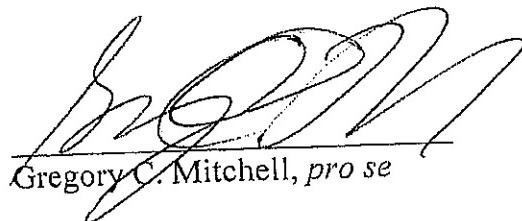
Attached is a copy of the Docket sheet of the U.S. Bankruptcy Court of Virginia (Alexandria) showing that Plaintiff filed for Bankruptcy on June 18, 2009, Case No.: 09-14885-RGM. Counsel for Defendants had been provided a copy of this docket sheet on June 19, 2009.

Respectfully submitted,


Gregory C. Mitchell, *pro se*
1667 K Street NW
Suite 677
Washington, DC 20006
(202) 776-1161 phone
(202) 776-1160 facsimile
gregorymitchell@mindspring.com

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing Plaintiff's Notice of Filing for Bankruptcy was mailed by postage prepaid first class mail to Colleen MacAlister, Esq. on July 22, 2009.



Gregory C. Mitchell, *pro se*

**U.S. Bankruptcy Court
Eastern District of Virginia (Alexandria)
Bankruptcy Petition #: 09-14885-RGM**

Date filed: 06/18/2009

Assigned to: Robert G. Mayer
Chapter 7
Voluntary
No asset

Debtor

Gregory Charles Mitchell
1667 K Street NW #677
Washington, DC 20006
SSN / ITIN: xxx-xx-2430

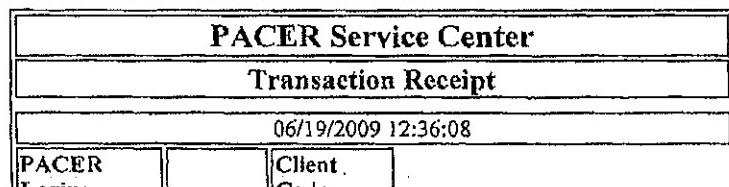
represented by **John C. Morgan, Jr.**

John Carter Morgan, Jr.,
PLLC
98 Alexandria Pike, Suite 10
Warrenton, VA 20186
(540)349-3232
Fax : (540)349-1278
Email:
johnmorgan@mris.com

Trustee

Gordon P. Peyton
Redmon, Peyton & Braswell
510 King Street, Suite 301
Alexandria, VA 22314
(703) 684-2000

| Filing Date | # | Docket Text |
|-------------|---|---|
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http://apps.collierclerk.com/public_inquiry/Case.aspx?UCN=112008CA0092100001XX&CT=CV

| EVIDENCE INVENTORY WORKSHEET ENVELOPE | |
|---------------------------------------|---|
| 5/15/2009 | |
| 05/15/2009 | WITNESS LIST |
| 05/15/2009 | SWORN JUROR LIST |
| 05/15/2009 | MINUTES - JURY |
| 05/15/2009 | JURY INSTRUCTIONS |
| 05/15/2009 | VERDICT FOR DEFENDANT |
| 05/21/2009 | CORRESPONDENCE FROM COUNSEL TO JUDGE |
| 05/21/2009 | FINAL JUDGMENT ON DEFENDANTS COUNTERCLAIM AND GRANTING DEFENDANTS MOTION FOR A DIRECTED VERDICT/PLAINTIFF SHALL RECOVER NOTHING S/HAYES 5/20/09 |
| 06/10/2009 | MOTION FOR ATTORNEYS FEES/COSTS BY DEFENDANTS |
| 06/17/2009 | AFFIDAVIT AS TO ATTORNEYS FEES |
| 06/29/2009 | NOTICE OF HEARING 7/27/09 11:00 ATTORNEY FEES AND COSTS |
| 07/23/2009 | CORRESPONDENCE FROM COUNSEL TO CLERK |
| 07/23/2009 | NOTICE OF FILING COPY BANKRUPTCY DOCKET SHEET ON BEHALF OF GREGORY CHARLES MITCHELL FILED 6/18/09 09 14885 RGM |
| 07/27/2009 | CORRESPONDENCE FROM COUNSEL TO JUDGE (FAX) |
| 07/27/2009 | NOTICE OF FILING (COPY) BANKRUPTCY PACER REPORT ON BEHALF OF GREGORY CHARLES MITCHELL FILED 6/18/09 09 14885 RGM |
| 07/27/2009 | MOTION FOR ATTORNEYS FEES AND COSTS GRANTED S/ DEFENDANT ATTORNEYS REQUEST FOR JUDICIAL NOTICE THAT THE JUDGMENT WILL BE FILED IN VIRGINIA/PLAINTIFF NOT PRESENT/DEFENDANT ATTORNEY COLLEEN MACALISTER PRESENT |
| 07/27/2009 | MINUTES - HEARING SEE SCHEDULE MINUTES FOR DETAILS |
| 07/27/2009 | ORDER GRANTING MOTION FOR AWARDING ATTORNEY FEES AND COSTS S/HAYES 7/27 |

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL DIVISION

GREGORY C. MITCHELL,

Plaintiff,

Case No.: 08-9210-CA

vs.

ARRON KYLE RAISTRICK and
CINDY RAISTRICK,

Defendants.

ORDER AWARDING ATTORNEY FEES AND COSTS

THIS CAUSE, came before the Court on July 27, 2009, on Defendants' Motion to award prevailing party attorney fees and costs in this action, pursuant to Chapter 83.48, *Florida Statutes*. In consideration thereof, the Court having reviewed the case file and relevant pleadings, and:

1. The Expert Affidavit filed by Attorney Mark A. Slack, Esq., stating that the hourly rate of \$200.00 was reasonable and that a total fee of \$22,183.50 for representation in this cause was reasonable and necessary.
2. The Court took Judicial Notice of the fact that the Plaintiff received Notice of this Hearing, and was not present. Plaintiff did not file an objection to the Defendants' Motion for attorney fees and costs, nor did the Plaintiff file an objection to the fees and costs requested by the Defendants in the Motion.

Based thereon, the Court finds:

1. That the hourly rate of \$200.00 for representation in this matter is reasonable.
2. That attorney fees of \$22,183.50 for representation is reasonable and necessary.
3. That \$4,505.58 in costs for representation is reasonable.

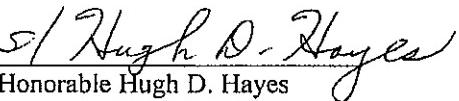
Based on the foregoing and in consideration of the factors enumerated in *Florida Patients Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985), it is

ORDERED and ADJUDGED that:

Defendants, ARRON KYLE RAISTRICK and CINDY RAISTRICK, 449 Worthington Street, Marco Island, Florida 34145, have and recover against Plaintiff, GREGORY C. MITCHELL, the sum of \$22,183.50 in attorney fees and the sum of \$4,505.58 in costs, for a total of \$26,689.08.

Said sum will earn interest at the statutory rate, for which let execution issue.

DONE AND ORDERED in Naples, Collier County, Florida this 27 day of July, 2009.


Honorable Hugh D. Hayes
Circuit Court Judge

Copies to:

Gregory C. Mitchell
Colleen J. MacAlister, Esq.